

Ze-Situation: A Constitutional Law Perspective on Ukraine's Elections and What is Coming Next

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On 21 April, 41-year-old actor and comedian Volodymyr Zelenskiy (Ze), who entered the political scene only in January 2019, won the second ballot of Ukraine's presidential election. Despite having no political experience and no representation in the *Verkhovna Rada* (Ukraine's parliament), Zelenskiy received 73 percent of the national vote and decisively beat the incumbent President of Ukraine, Petro Poroshenko. He has been perceived as such a phenomenon in Ukraine's political landscape that his name even inspired a new set of vocabulary: The terms 'Ze-team', 'Ze-president' entered the political lexicon during the presidential campaign where 'Ze' hints not only to Zelenskiy but also to the article 'the'.

Ukrainians are placing high hopes on their new President to improve the country's political and economic situation. But political games and Ukraine's constitution will make it difficult for Zelenskiy to bring about the change he was elected for.

Ups and downs of Ukrainian presidents: electoral statistics

A new figure in Ukrainian politics, Volodymyr Zelenskiy secured an unprecedented victory in the history of presidential elections in Ukraine. [He triumphed in every region, except for the area around the city of Lviv, where 62,8 percent of voters supported Petro Poroshenko.](#) Ze-phenomenon exemplifies a protest vote as his success can be explained by the disappointment of the Ukrainian society in Poroshenko's presidency. As Zelenskiy put it during the presidential debate with Poroshenko held on 19 April in the giant 70,000-seat Olympic Stadium: 'I am the result of your mistakes and your failed promises.'

Interestingly, several years ago Ukrainian legislation had a tool for the so-called 'protest' or 'disapproval' vote as ballots included the option 'against all'. This option could be selected when voters did not want to vote for any candidate, so instead of annulling the vote, Ukrainians could clearly express their rejection of the entire political elite. The option "against all" was a popular selection among Ukrainians. In the 2010 presidential elections, for instance, 4,36 percent of votes were cast 'against all'. In 2011, however, newly adopted legislation removed the possibility to vote 'against all', leaving a space for the discussion on the percentage of votes against Poroshenko among those who supported Zelenskiy. [One of the polls indicates that around 40 percent of the Zelenkiy's votes could be out of protest.](#)

If so, Zelenskiy's political base is smaller than the results suggest. In addition, the statistics of presidential elections in Ukraine show that there is a fine line between people's love and hate as support can quickly turn into disappointment.

Viktor Yushchenko, who won a revote and entered president's office in January 2005 on the wave of the Orange Revolution with 52 percent of support, became Ukraine's greatest political disappointment: in the 2010 presidential elections he received only 5,5 percent of the vote. [Yuschchenko left office with the Ukraine in an economic crisis, paralyzed by a bitter political standoff that had Ukrainians disillusioned and wondering what the Orange Revolution was all about.](#) Finally, in the in 2012 elections, Yushchenko's political party 'Our Ukraine' received only 1,11 percent of the national votes and failed to even win representation in parliament.

Poroshenko, who was elected in the aftermath of the Euromaidan, in many ways repeated the fate of Yushchenko. Ukrainian society hoped that he would stop the war, end corruption, investigate murders committed during the Euromaidan, ensure equality, human rights and democracy in Ukraine. In 2014, these expectations allowed Poroshenko to capture almost 55 percent of support and be elected in the first round. Poroshenko was not able to meet these expectations and the people's disappointment resulted Zelenskiy's victory.

It is difficult to predict how long Zelenskiy will enjoy political popularity and people's trust. [A poll by the Kyiv International Institute of Sociology shows](#) that expectations from Zelenskiy's presidency are very high: 39% of Ukrainians believe he will reduce the cost of utility bills; 36% want him to strip immunity from prosecution from MPs, judges and the president himself; and a further 32% want him to start or speed up the investigation of major corruption cases.

These expectations have a lot of potential for disappointment. For one, there is almost nothing the president can do about utility bills, not only because it's a comprehensive question which cannot be solved without the revival of Ukraine's economy, but because such decisions are not in the president's legal competence. The other promises can be implemented in cooperation and with the support of parliament, but it is very likely that Zelenskiy, who is a complete 'outsider' and 'stranger', will not be accepted as a leader and reformer by the Ukrainian political establishment.

One man – no man, or what can the President of Ukraine really do?

To understand the current 'Ze-situation' and the perspective of further political developments some preliminary remarks regarding Ukraine's Basic Law should be made. Adopted in 1996, the Constitution of Ukraine originally established a strong presidential power. Notwithstanding the existence of a prime-minister, the power to effectively control the cabinet lay with the president. Ukraine had this system in 1996-2006 and in 2010-2014. In 2006-2010 Ukraine was, and has been since 2014, a parliamentary-presidential republic.

The amendments introduced to the Constitution of Ukraine in 2004 limited presidential power and transformed the system from a presidential-parliamentary to a parliamentary-presidential one. Thus, under the Constitution in force, in order to be effective and control the executive in this system, the president needs to be backed by parliament. The parliamentary-presidential system does not allow the president to dismiss government; this competence rests with the parliament. Most of the president's personnel decisions (on appointment or dismissal) must be approved by parliament (see Art. 106 of [Ukraine's Constitution](#)). Interestingly, Zelenskiy is the first politician in Ukraine's history who started his political career not from parliament but from the presidential office (Zelenskiy's political party 'Servant of the people' is expected to participate in the next parliamentary elections, in October 2019, for the first time).

The irony of Ze-situation is that the newly elected president is supported by 73 percent of the national vote but has no representation in the *Verkhovna Rada* of Ukraine. This means that almost all officials, including the Prime Minister of Ukraine and the cabinet, the Prosecutor General of Ukraine, the Head of the Security Service of Ukraine (SBU) etc., appointed by Petro Poroshenko have a chance to remain in office after Zelenskiy's inauguration. In such circumstances it will be quite difficult for Zelenskiy to meet people's demands to prosecute top Ukrainian politicians involved in the corruption schemes and, at the same time explain to Ukraine's voters why he could not do this. Thus, people's support can be easily lost.

Considering that President Zelenskiy is not supported by the *Verkhovna Rada* it is logical to expect that he will try to dissolve the parliament. However, there are at least two constitutional problems. First, it is not clear if the constitutional requirements for early termination of power are fulfilled. President Yushchenko's attempts in 2007 to dissolve the parliament, for example, illustrated that the constitutional provisions regarding early termination of the parliamentary powers are very unclear. Second, it is doubtful that the newly elected president will have time to make this decision since the powers of the parliament may not be subject to an early termination within the last six months of the term of powers of the *Verkhovna Rada of Ukraine* (Art. 90 of the Constitution). Considering that the *Verkhovna Rada* of Ukraine retains its power for a five-year term (Art. 76 of the Constitution) and that the people's deputies took the oath on 27 November 2014, the parliamentary term ends on 27 November 2019. Thus, the last day to dissolve the *Verkhovna Rada* is 27 May 2019.¹⁾ Interestingly, the constitutional provisions regarding the last date of dissolving the parliament can be interpreted differently. For instance, Pavlo Vovk, the Head of Kiev's District Administrative Court, states that the end date to dissolve the parliament is 16 June 2019. This opinion refers to article 90 of the Constitution, which says that the powers of the *Verkhovna Rada* of Ukraine shall be terminated on the day of the opening of the first meeting of the *Verkhovna Rada* of Ukraine of a new convocation. Thus, the incumbent Parliament terminates its power not on 27 November but no later than 16 December 2019 taking into account 20 days for the official announcement of results (Law of Ukraine 'On Election of the People's deputies of Ukraine') and 30 days within which the newly elected Parliament shall convene its first session (Art. 82 of the Constitution). But for this, Zelenskiy would first have to assume office.

Current political games

Recent developments in Ukraine show that incumbent *Verkhovna Rada* and President Poroshenko will do their best to postpone Zelenskiy's inauguration to avoid the parliament's dissolving.

There are at least two ways of doing this. First, it looks like the official results of presidential elections will be announced on the last day of deadline stipulated by law. Notably, it took less time to announce the results of the first round with 39 candidates than the second one in which only two candidates participated. After the official results of the elections are announced (no later than 4 May 2019), the *Verkhovna Rada* will have 30 days to have a ceremonial meeting of the President's inauguration. Therefore it is unlikely, that the Parliament will allow Zelenskiy to assume presidential office before 27 May 2019.

Second, the Constitutional Court of Ukraine is under pressure because the Chairman of the Court is responsible for administering the oath to the elected President of Ukraine (Art. 104 of the Constitution). Therefore, if the Chairman of the Court is dismissed, the move will allow to disrupt the inauguration ceremony. Regarding a rumor around this scenario, the Constitutional Court of Ukraine made a statement ([published on the Court's official website](#)) stressing that:

this information [i.e. the possibility of removing the Chairman of the Court – author's note] is not true, aimed to discredit the Constitutional Court of Ukraine and destabilize the political situation. In addition, it creates a wrong understanding of the constitutional procedure of inauguration, artificially connecting a concrete person, who is currently the Chairman of the Constitutional Court of Ukraine, to administer the President's oath.

Finally, the *Verkhovna Rada* is planning to limit presidential power by adopting a new law 'On the President of Ukraine'. The main idea of this law is to transfer some presidential powers to parliament, the government or the prime minister. As a result of this planned reform, the President of Ukraine will lose political independence and be controlled by both the legislative and the executive. The issue of stripping the President of some powers is not new for Ukraine. However, now it is discussed with great zeal demonstrating the hostility of the members of parliament toward Zelenskiy. It should be noted that some of the proposals would be in violation of the constitution. But even if all the proposals were constitutional, the fact that the initiative to limit presidential powers is pushed forward by the parliament against the newly elected president just a few months before parliamentary elections questions their legitimacy.

The further development of Ze-situation depends on how Zelenskiy will manage to build his relationship with the *Verkhovna Rada*. In such circumstances, parliamentary elections will be a continuation of the presidential campaign and a 'third round' of the presidential elections.

References

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